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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,922	07/03/2003	David S. Utterberg	441700	4670

27717 7590 03/09/2005

SEYFARTH SHAW  
55 EAST MONROE STREET  
SUITE 4200  
CHICAGO, IL 60603-5803

EXAMINER

HAN, MARK K

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/613,922

Applicant(s)

UTTERBERG, DAVID S.

Examiner

Mark K Han

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,501,426 to Atkinson et al. (hereinafter "Atkinson") in view of U.S. Patent No. 5,188,620 to Jepson et al. (hereinafter "Jepson").

Atkinson shows a medical device having an interior (unnumbered), elastomeric wall 16', slit 36', outer face 10', bore portion 28', frustoconical wall 66', outer lugs 58'/60', flexible tubing 18', male connector 64' and female connector 10'. See Figures 6-8. Atkinson, however, does not show that the elastomeric wall is essentially free of longitudinally inwardly extending projections. Jepson shows such a wall 52. See Figures 1-28. It would have been obvious to one of ordinary skill in the art to modify the replace the elastomeric wall of Atkinson, with an elastomeric wall of Jepson, in order to provide a seal that is easily wipeable, easy to manufacture and that will prevent contaminants from entering the fluid chamber.

### ***Response to Arguments***

2. Applicant's arguments, see pp. 3-6, filed 27 December 2004, with respect to the rejection(s) of claim(s) 1-22 under 35 U.S.C. §102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration,

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a new ground(s) of rejection is made under 35 U.S.C. §103(a) as being unpatentable over Atkinson in view of Jepson.

*Contact Information*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark K Han whose telephone number is 571-272-4958. The examiner can normally be reached on Monday to Friday, 9 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
MARK K. HAN  
SUPERVISOR/TECHNICAL CENTER  
TECHNOLOGY CENTER (EBC)



Mark Han  
Patent Examiner  
Art Unit 3763

mkh  
March 1, 2005